

SEP 26 2005

Sue Regan

SUE REGAN
DEPUTY CLERK OF SUPERIOR COURT

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorneys for Plaintiffs

By: Brian M. Brennan
Deputy Attorney General
(973) 648-4425

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, MERCER COUNTY
DOCKET NO. MER-L- 2520-05

PETER C. HARVEY, Attorney General of the
State of New Jersey, KIMBERLY S. RICKETTS,
Director of the New Jersey Division of Consumer
Affairs, and LOUIS E. GREENLEAF,
Superintendent of the State of New Jersey, Office
of Weights and Measures,

Plaintiffs,

v.

AMERADA HESS CORPORATION,
ROCKAWAY HESS, INC., JANE AND JOHN
DOES 1-20, individually and as officers, directors,
shareholders, founders, owners, agents, servants
and/or employees of AMERADA HESS
CORPORATION and/or ROCKAWAY HESS,
INC., and XYZ CORPORATIONS 1-20,

Defendants.

Civil Action

COMPLAINT

Plaintiffs Peter C. Harvey, Attorney General of the State of New Jersey, with offices located
at 124 Halsey Street, Fifth Floor, Newark, New Jersey, Kimberly S. Ricketts, Director of the New
Jersey Division of Consumer Affairs, with offices located at 124 Halsey Street, Seventh Floor,

Newark, New Jersey, and Louis E. Greenleaf, Superintendent of the New Jersey Office of Weights and Measures, with offices located at 1261 Routes 1 & 9 South, Avenel, New Jersey, by way of this Complaint state:

PARTIES AND JURISDICTION

1. The Attorney General of the State of New Jersey ("Attorney General") is charged with the responsibility of enforcing the New Jersey Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1 et seq., and all regulations promulgated thereunder, N.J.A.C. 13:45A-1.1 et seq. The Director of the New Jersey Division of Consumer Affairs ("Director") is charged with the responsibility of administering the CFA and the regulations promulgated thereunder on behalf of the Attorney General.

2. Pursuant to N.J.S.A. 51:1-42, the New Jersey Office of Weights and Measures ("Office of Weights and Measures") in the Department of Law and Public Safety, is charged with the responsibility, among other things, of establishing a uniform standard of weights and measures and to provide penalties for the use of other than standard or legal weights and measures, as provided in the Weights and Measures Act, N.J.S.A. 51:1-1.

3. The Superintendent of the Office of Weights and Measures ("Superintendent") is charged with the responsibility of administering the Weights and Measures Act, N.J.S.A. 51:1-1 et seq. and all regulations promulgated thereunder. Pursuant to N.J.S.A. 56:6-4.1, the Superintendent may recover penalties for violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., and the regulations promulgated thereunder, N.J.A.C. 18:19-1.1 et seq.

4. By this action, the Attorney General, Director and Superintendent (collectively referred to as "Plaintiffs") seek injunctive and other relief for violations of the CFA and/or the Motor Fuels Act. Plaintiffs bring this action pursuant to their authority under the CFA and/or the Motor

Fuels Act, specifically N.J.S.A. 56:8-8, 56:8-11, 56:8-13 and/or 56:6-4.1. Venue is proper in Mercer County, pursuant to R. 4:3-2, because it is a county in which the cause of action arose and/or in which some of the defendants have conducted business and/or maintained principal offices to conduct business.

5. Defendant Amerada Hess Corporation ("Amerada Hess") is a Delaware corporation established on May 21, 1969. Upon information and belief, at all relevant times, Amerada Hess has maintained its principal place of business at 1185 Avenue of the Americas, New York, New York 10036.

6. Amerada Hess conducts business as a foreign corporation in the State of New Jersey (the "State"). The registered agent in the State for Amerada Hess is Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

7. Upon information and belief, at all relevant times, Amerada Hess has maintained its principal place of business in the State at 1 Hess Plaza, Woodbridge, New Jersey 07095.

8. Defendant Rockaway Hess, Inc. ("Rockaway Hess") is a corporation established in the State on September 1, 1988. Upon information and belief, at all relevant times, Rockaway Hess has maintained its principal place of business at 753 North 6th Street, Newark, New Jersey 07107.

9. Upon information and belief, the registered agent in the State for Rockaway Hess is Thomas Maoli, who maintains a mailing address of 119 Wilson Street, Nutley, New Jersey 07044.

10. Upon information and belief, John and Jane Does 1 through 20 are fictitious individuals meant to represent the officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives and/or independent contractors of Amerada Hess and/or Rockaway Hess who have been involved in the conduct that gives rise to this Complaint, but are

heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

11. Upon information and belief, XYZ Corporations 1 through 20 are fictitious corporations meant to represent any additional corporations who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

12. Amerada Hess and Rockaway Hess are collectively referred to as the "Defendants".

GENERAL ALLEGATIONS

13. At all relevant times, Amerada Hess has been engaged in the distribution of motor fuels to service stations in the State and elsewhere. Upon information and belief, the motor fuels comprised four (4) grades: Regular, Plus, Premium and Diesel.

14. Upon information and belief, at all relevant times, Amerada Hess has operated gasoline service stations within the State.

15. Upon information and belief, the service stations operated by Amerada Hess include the following: (a) 1552 Rt. 23 North, Butler, New Jersey (Station No. 30330); (b) 1215 St. George Avenue, Colonia, New Jersey (Station No. 30231); (c) 317 Main Street, Hackettstown, New Jersey (Station No. 30270); (d) Route 46 East & Mountain Lakes Blvd., Mountain Lakes, New Jersey (Station No.); (e) 973 Memorial Parkway, Rt. 22 West, Phillipsburg, New Jersey (Station No. 30300); (f) 200 Route 23, Pompton Plains, New Jersey (Station No. 30512); (g) 289 Route 10, Succasunna, New Jersey (Station No. 30316); and (h) 323 Stage & Route 31, Washington Township, New Jersey (Station No. 30325).

16. Upon information and belief, at all relevant times, independently owned and/or operated service stations in the State market, advertise, solicit and otherwise offer for sale "Hess" motor fuel to consumers in the State and elsewhere.

17. Upon information and belief, at all relevant times, the independently owned and/or operated stations have included Rockaway Hess.

COUNT I

VIOLATIONS OF THE MOTOR FUELS ACT BY DEFENDANTS AMERADA HESS AND ROCKAWAY HESS (MULTIPLE PRICE CHANGES WITHIN 24 HOURS)

18. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 17 above as if more fully set forth herein.

19. The Motor Fuels Act, N.J.S.A. 56:6-1 et seq. governs the sale of motor fuels by retail dealers within the State.

20. To the extent it is engaged in the operation of service stations in the State, Amerada Hess is a "retail dealer" within the definition of N.J.S.A. 56:6-1.

21. Rockaway Hess is a "retail dealer" within the definition of N.J.S.A. 56:6-1.

22. The Motor Fuels Act provides in pertinent part:

(a) Every retail dealer shall publicly display and maintain, in the manner regulated by the Director of the Division of Taxation, a sign stating the price per gallon if sold by the gallon, and per gallon and per liter if sold by the liter of the motor fuel sold by the dealer. All taxes, State and Federal, imposed with respect to the manufacture or sale of motor fuel shall be included in the price shown on said sign, but said sign shall contain a statement of the amount of taxes included in said price, or without specifying the amount thereof, said sign shall state that taxes are included in said price. A retail dealer shall not sell at any other price than the price,

including tax, so posted. Any such price when posted shall remain posted and in effect for a period of not less than twenty-four (24) hours.

[N.J.S.A. 56:6-2(a) (emphasis added).]

23. Upon information and belief and at least from August 28, 2005 through September 10, 2005, Amerada Hess changed the price for all four (4) grades of motor fuel more than once in a twenty-four (24) hour period at service stations in the State including, but not limited to, the Amerada Hess service stations at the following locations: (a) 1552 Rt. 23 North, Butler, New Jersey (Station No. 30330); (b) 1215 St. George Avenue, Colonia, New Jersey (Station No. 30231); (c) 317 Main Street, Hackettstown, New Jersey (Station No. 30270); (d) Route 46 East, Mountain Lakes, New Jersey; (e) 973 Memorial Parkway, Rt. 22 West, Phillipsburg, New Jersey (Station No. 30300); (f) 200 Route 23, Pompton Plains, New Jersey (Station No. 30512); (g) 289 Route 10, Succasunna, New Jersey (Station No. 30316); and (h) 323 Stage & Route 31, Washington Township, New Jersey (Station No. 30325).

24. Upon information and belief at least from August 31, 2005 through September 1, 2005, Rockaway Hess changed the prices for its regular, plus, premium, and diesel grades of fuel more than once in a twenty-four (24) hour period.

25. The conduct of Amerada Hess and Rockaway Hess constitutes multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq.

COUNT II

VIOLATIONS OF THE MOTOR FUELS ACT AND MOTOR FUELS REGULATIONS BY DEFENDANT AMERADA HESS (FAILURE TO MAINTAIN BOOKS AND RECORDS)

26. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 25 above as if more fully set forth herein.

27. The Motor Fuels Act, N.J.S.A. 56:6-12, further requires that retail dealers maintain records and provides, in pertinent part:

Every retail dealer shall keep such records as may be prescribed by orders, rules or regulations of the director and as may be necessary to the determination of whether or not such retail dealer has observed the provisions of this act. All such records shall be safely preserved for a period of four years in such manner as to insure their security and accessibility for inspection by the director or any employee of the Division of Taxation engaged in the administration of this act. . . .

28. The Motor Fuels Regulations specify the records to be maintained by the retail dealers, as follows:

(a) Every retail dealer must keep records as described in this section and as are necessary to the determination of whether or not such retail dealer has observed the provisions of this chapter.

[N.J.A.C. 18:19-4.1(a).]

29. At all relevant times, Amerada Hess failed to maintain the requisite records at its service stations including, but not limited to, service station #30231 located at 1215 St. George Avenue in Colonia, New Jersey and service station #30300 located at 973 Memorial Parkway, Route 22 West in Phillipsburg, New Jersey.

30. The conduct of Amerada Hess constitutes multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-12, and the Motor Fuels Regulations, N.J.A.C. 18:19-4.1.

COUNT III

**VIOLATIONS OF THE MOTOR FUELS ACT AND
MOTOR FUELS REGULATIONS
BY DEFENDANT AMERADA HESS
(FAILURE TO PROVIDE ACCESS TO BOOKS AND RECORDS)**

31. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 30 above as if more fully set forth herein.

32. The Motor Fuels Act, N.J.S.A. 56:6-7, further requires that retail dealers provide access to their books and records as follows:

For the purpose of administering this act, the commissioner whenever he deems it expedient, may make or cause to be made by any employees of the State Tax Department engaged in the administration of this act an audit, examination or investigation of the books, records, papers, vouchers, accounts and documents of any retail dealer. It shall be the duty of every retail dealer, his agents or employees, to exhibit to the commissioner or to any such employee of the State Tax Department all such books, records, papers, vouchers, accounts and documents of the retail dealer and to facilitate any such audit, examination or investigation so far as it may be in his or their power to do so.

33. The Motor Fuels Regulations, N.J.A.C. 18:19-5.2, similarly require that retail dealers make available their books and records and that they facilitate any such audit, examination or investigation.

34. At all relevant times, Amerada Hess has failed to provide access to the books and records at its corporate offices as well as its service stations, including, but not limited to service station #30270 at 317 Main Street in Hackettstown, New Jersey.

35. The conduct of Amerada Hess constitutes multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-7, and the Motor Fuels Regulations, N.J.A.C. 18:19-5.2.

COUNT IV

VIOLATIONS OF THE CFA BY DEFENDANTS AMERADA HESS AND ROCKAWAY HESS (UNCONSCIONABLE COMMERCIAL PRACTICES)

36. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 35 above as if more fully set forth herein.

37. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise. . .

38. At all relevant times, Amerada Hess has been engaged in the distribution of motor fuel to service stations in the State.

39. At all relevant times, Amerada Hess and Rockaway Hess have engaged in the retail sale of motor fuels at service stations within the State.

40. In so doing, Amerada Hess and Rockaway Hess have engaged in the use of unconscionable commercial practices.

41. The conduct of Amerada Hess in violation of the CFA includes, but is not limited to, directing its service stations to increase motor fuel prices more than once during a twenty-four (24) hour period.

42. The conduct of Amerada Hess and Rockaway Hess in violation of the CFA includes, but is not limited to, the following:

- a. Selling motor fuel at a price that was increased more than once during a twenty-four (24) hour period; and

b. Charging consumers for motor fuel sold at an unlawful price.

43. Each unconscionable commercial practice by Amerada Hess and Rockaway Hess constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

COUNT V

VIOLATIONS OF THE ADVERTISING REGULATIONS BY DEFENDANT AMERADA HESS

44. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 43 above as if more fully set forth herein.

45. The Merchandise Advertising Regulations, N.J.A.C. 13:45A-9.1 et seq., promulgated pursuant to the CFA (hereinafter "Advertising Regulations"), address, among other issues, general advertising practices concerning merchandise.

46. Motor fuel is "merchandise" within the definition of N.J.A.C. 13:45A-9.1.

47. Specifically, the Advertising Regulations provide, in relevant part:

(a) Without limiting the application of N.J.S.A. 56:8-1 et seq., the following practices shall be unlawful with respect to all advertisements:

....

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

[N.J.A.C. 13:45A-9.2(a)(9).]

48. Amerada Hess violated the Advertising Regulations by engaging in certain conduct including, but not limited to, displaying on outside signage retail prices for motor fuels that did not reflect the actual retail price charged consumers.

49. Each violation of the Advertising Regulations by Amerada Hess constitutes a per se violation of the CFA, N.J.S.A. 56:8-2.

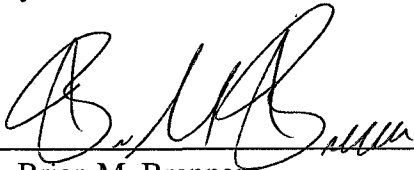
PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter judgment against Defendants:

- (a) Finding that the acts and omissions of Defendants constitute multiple violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., the Motor Fuels Regulations, N.J.A.C. 18:19-1.1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9-1 et seq.;
- (b) Permanently enjoining Defendants and their officers, directors, shareholders, founders, owners, agents, servants, employees, sales representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under their control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., the CFA, N.J.S.A. 56:8-1 et seq., the Motor Fuels Regulations, N.J.A.C. 18:19-1.1 et seq., and the Advertising Regulations, N.J.A.C. 13:45A-9-1 et seq., including, but not limited to the acts and practices alleged in this Complaint;
- (c) Directing the assessment of restitution amounts against Defendants to restore to any affected person, whether or not named in this Complaint, any money or real or personal property acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendants for each and every violation of the Motor Fuels Act and the Motor Fuels Act Regulations;
- (e) Assessing the maximum statutory civil penalties against Defendants for each and every violation of the CFA, in accordance with N.J.S.A. 56:8-13 and N.J.S.A. 56:8-18;

- (f) Directing the assessment of costs and fees, including attorneys' fees, against Defendants for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (g) Granting such other relief as the interests of justice may require.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

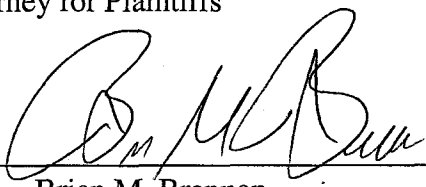
By: 
Brian M. Brennan
Deputy Attorney General

Dated: September 26, 2005
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the Motor Fuels Act, N.J.S.A. 56:6-1 et seq., the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. and the accompanying regulations, is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendants, but have no direct information that any such actions involve the above-referenced allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: 
Brian M. Brennan
Deputy Attorney General

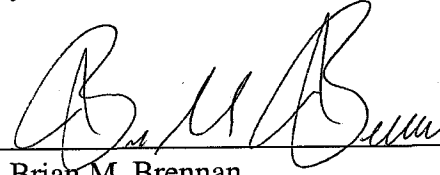
Dated: September 26, 2005
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Deputy Attorney General Brian M. Brennan is hereby designated as trial counsel for this matter.

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: _____

A handwritten signature in black ink, appearing to read 'Brian M. Brennan', is written over a horizontal line.

Brian M. Brennan
Deputy Attorney General

Dated: September 26, 2005
Newark, New Jersey